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### **REMARKS/ARGUMENTS**

In light of the amendments to the claims presented herein and the following remarks, reexamination and reconsideration of this application, withdrawal of the rejections, and formal notification of the allowability of all claims as presented are earnestly solicited. As detailed in the Office Action mailed September 22, 2005, Claims 1-42 are pending, wherein Claims 1-11, 14, 15, 17-26, 28, 29, 31-40, and 42 have been rejected and Claims 12, 13, 16, 27, 30, and 41 have been objected to. In response to the Office Action, Claims 1, 18, and 32 have been amended to further clarify the subject matter being claimed. The amendments to the claims find support throughout the Specification and the Drawings and no new matter has been added. Accordingly, it is believed that the claims now define patentable subject matter over the prior art cited in the Office Action and notice to such effect is requested at the Examiner's earliest convenience.

### **Claim Rejections – 35 U.S.C. §102**

Claims 1, 2, 8-11, 14, 15, 18-20, 24-26, 28, 29, 32, 33, 39, and 40 were rejected as being anticipated by U.S. Patent No. 6,497,135 to Hoskinson *et al.* In response, Claim 1, upon which Claims 2, 8-11, 14, and 15 depend; Claim 18, upon which Claims 19, 20, 24-26, 28, and 29 depend; and Claim 32, upon which Claims 33, 39, and 40 depend, have been amended to further clarify the subject matter being claimed. The amendments to the claims find support throughout the Specification and the Drawings, and no new matter has been added.

The Hoskinson '135 patent is directed to a system and method for measuring spatial variability in soil characteristics. Such systems and methods are directed to measuring a load force associated with pulling a farm implement through soil that is used to generate a spatially variable map that represents the spatial variability of the physical characteristics of the soil. An instrumented hitch pin configured to measure a load force is provided that measures the load force generated by a farm implement when the farm implement is connected with a tractor and pulled through or across soil. That is, the farm implement that is to be pulled through the soil is connected to the tractor for pulling the farm implement via a hitch pin that measures the

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**shear force or the pull load imparted to the farm implement by the resistance of the soil.**

Each time a load force is measured, a global positioning system identifies the location of the measurement. This data is stored and analyzed to generate a spatially variable map of the soil. The map is representative of **the physical characteristics of the soil inferred from the magnitude of the load force on the hitch pin.** That is, the Hoskinson '135 patent discloses systems and methods whereby **any resulting physical characteristic of the soil is inferred or indirectly determined from a force measured by an instrumented hitch pin between a tractor and a farm implement being pulled through the soil.**

In contrast, independent Claim 1 now particularly recites a system adapted to determine a property of a paving-related material, wherein such a system comprises a measuring device for selectively and directly measuring the property of the paving-related material. A computer device is capable of executing a software program product and communicating with the measuring device, wherein the computer device is configured to **direct the measuring device to directly measure the property of the paving-related material** according to a parameter determined by the software program product, and to receive data comprising the measured property of the paving-related material from the measuring device. A communication element is operably engaged between the measuring device and the computer device so as to allow communication therebetween such that **the measuring device directly measures the property of the paving-related material in response to the direction of the computer device received via the communication element.** The communication element is configured to allow the computer device to be spaced apart from the measuring device, thereby allowing the computer device to be prepared, to include the parameter and to manipulate the data, in spaced apart relation with respect to the measuring device.

Independent Claim 18 recites a method of determining a property of a paving-related material, wherein such a method comprises preparing a computer device to execute a software program product for **directing a measuring device to directly measure the property of the paving-related material,** according to a parameter determined by the software program product, and to receive data comprising the measured property of the paving-related material from the

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measuring device. After executing the software program product, the executed software program product is communicated from the computer device to the measuring device via a communication element operably engaged therebetween such that the measuring device directly measures the property of the paving-related material in response thereto. The communication element is configured to allow the computer device to be spaced apart from the measuring device such that the computer device can be prepared, in spaced apart relation with respect to the measuring device, to include the parameter and to manipulate the data.

Independent Claim 32 recites a system adapted to cooperate with a measuring device to selectively and directly measure a property of a paving-related material, wherein such a system comprises a computer device capable of executing a software program product and communicating with the measuring device. The computer device is configured to direct the measuring device to directly measure the property of the paving-related material according to a parameter determined by the software program product, and to receive data comprising the measured property of the paving-related material from the measuring device. A communication element is operably engaged between the measuring device and the computer device so as to allow communication therebetween such that the measuring device directly measures the property of the paving-related material in response to the direction of the computer device via the communication element. The communication element is configured to allow the computer device to be spaced apart from the measuring device, thereby allowing the computer device to be prepared, to include the parameter and to manipulate the data, in spaced apart relation with respect to the measuring device.

Thus, each of Claims 1, 18, and 32 requires that a measuring device directly measure the property of the paving-related material, in response to a software program executed by a computer device and communicated from the computer device to the measuring device via a communication element. In contrast, the Hoskinson '135 patent discloses that shear force or pull load measurements are taken continuously or at intervals from an instrumented hitch pin disposed between a tractor and a farm implement, whereafter the physical characteristics of the soil are inferred, estimated, calculated, or otherwise indirectly determined from the

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**measurements**. Accordingly, the Applicants submit that there is no identity between Claims 1, 18, and 32, as amended, and the disclosure of the Hoskinson '135 patent. As such, the Applicants further submit that the present invention, as now defined by Claims 1, 18, and 32, as well as Claims 2, 8-11, 14, 15, 19, 20, 24-26, 28, 29, 33, 39, and 40 which depend therefrom, is patentable over the Hoskinson '135 patent. As such, the Applicants respectfully request withdrawal of these rejections.

#### **Claim Rejections – 35 U.S.C. §103**

Claims 3-7, 21-23, and 34-38 were rejected as being obvious over the Hoskinson '135 patent in view of U.S. Patent No. 5,132,871 to Densham *et al.*, and Claims 17, 31, and 42 were rejected as being obvious over the Hoskinson '135 patent in view of U.S. Patent Application Publication No. US 2004/0128613 to Sinisi. As previously discussed, Claim 1, upon which Claims 3-7 and 17 depend, Claim 18, upon which Claims 21-23 and 31 depend, and Claim 32, upon which claims 34-38 and 42 depend, are not anticipated by the Hoskinson '135 patent. As such, the Applicants submit that Claims 3-7, 17, 21-23, 31, 34-38, and 42, which depend either directly or indirectly from Claims 1, 18, or 32, are patentable over the Hoskinson '135 patent cited in the Office Action. As such, the Applicants respectfully request withdrawal of these rejections.

#### **Conclusion**

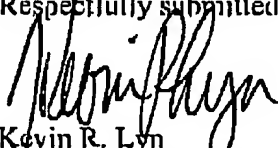
In summary, the Hoskinson '135 and Densham '871 patents and Sinisi '613 publication, either separately or in combination, **do not** teach or suggest the embodiments of the present invention as now claimed in Claims 1, 18, and 32. Accordingly, in view of these differences between the Applicants' invention and the Hoskinson '135, Densham '871, and Sinisi '613 references, it is submitted that the present invention, as defined by the pending claims, is patentable over the prior art cited in the Office Action. As such, Claims 1-42 are believed to be in condition for immediate allowance.

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In conclusion, for the reasons set forth above, the Applicant submits that all claims now pending are in condition for immediate allowance. Accordingly, notice to such effect is respectfully requested at the Examiner's earliest opportunity.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

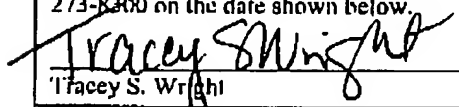
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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the US Patent and Trademark Office at Fax No. (571) 273-8300 on the date shown below.

  
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12/20/05  
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